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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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In re ISAIAH S., a Person Coming Under the  
Juvenile Court Law.

C084648

THE PEOPLE,

(Super. Ct. No. JV138144)

Plaintiff and Respondent,

v.

ISAIAH S.,

Defendant and Appellant.

In a proceeding under Welfare and Institutions Code section 602,<sup>1</sup> the juvenile court sustained a petition that then 17-year-old Isaiah S. (the minor) committed a lewd and lascivious act on B.D., a person under the age of 14 (Pen. Code, § 288, subd. (a)), and ordered the minor committed to the Division of Juvenile Justice (DJJ) for a maximum of eight years, not to exceed the statutory limitation for such commitment to age 21. On appeal, the minor contends the commitment to the DJJ was an abuse of

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

discretion and, if the disposition is reversed, then he is no longer required to register as a sex offender. Finding no abuse of discretion, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Jurisdiction***

Since the minor does not contest the validity of the juvenile court's order sustaining the petition, we briefly summarize the facts of the offense.

In December 2015, 10-year-old B.D. was living with his mother, her boyfriend, and her daughter. The minor, the boyfriend's nephew, is seven years older than B.D. B.D. lived with the minor's family for quite a while in 2009, and considered the minor to be his cousin.

B.D. was in the living room of his family's apartment with his "stepbrother" and the minor. There was a blanket on top of B.D. and the minor. While B.D.'s stepbrother was facing away, the minor took his own and B.D.'s shorts off. The minor next touched B.D.'s penis with his hand and then put his penis in B.D.'s anus. B.D. was scared, so he kept quiet. B.D. did not tell his stepbrother what happened after it stopped.

B.D. told his mother what happened one day after returning home from a Little League game. He also told her later that the minor threatened to beat him up if he told anyone. B.D. related what happened because he "just didn't want to keep it in" and "[s]o [the minor] wouldn't do it again."

B.D.'s mother called the police the following morning, April 3, 2016. B.D. was interviewed by a police officer, and later, a special assault forensic evaluation interview was conducted.

B.D.'s stepbrother testified that in the three or four times he, B.D., and the minor stayed the night at B.D.'s home, he never saw any inappropriate behavior between the

minor and B.D. B.D. had exaggerated in the past, which included making up stories about fights with his little brother.

The minor denied molesting B.D. Before the allegations, he considered his relationship with B.D. to be like brothers. At times, B.D. would get embarrassed and mad when the minor declined his invitations to do things like play catch or games. On the day B.D. made the allegations to his mother, the minor had gone to B.D.'s Little League game and promised they would play a new game B.D. just got if B.D. made it to first base. When B.D. failed to make it to first base, the minor left with his cousin. B.D. seemed upset when the minor walked away.

In December 2015, the minor weighed about 325 pounds and was five to six inches taller than B.D.

### ***Disposition***

Frank Weber, Ph.D., filed a psychological evaluation of the minor on November 10, 2016. The minor received a Juvenile Sexual Offense Recidivism Risk Assessment Tool-II (JSORRAT-II)<sup>2</sup> score of zero, which placed him in the low-risk category for sexual reoffending. His Juvenile Sex Offender Assessment Protocol-II (JSOAP-II)<sup>3</sup> score was 30%, which indicated a “relatively [higher] amount of risk based on dynamic or changeable factors [rather than] static or stable factors.” This score was elevated primarily due to the minor’s ongoing “[denial of] involvement in the current offense.”

The minor was then an 18-year-old youth with a stable early childhood and no history of abuse. He had no problems until high school, when he began to smoke

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<sup>2</sup> The JSORRAT-II is an actuarial measure of risk for juvenile sex offenders to reoffend.

<sup>3</sup> The JSOAP-II is a 28-item checklist composed of four scales, two that measure static risk factors and two that measure dynamic risk factors.

marijuana heavily and had issues with truancy. The minor did not have a significant mental health history, and based on the actuarial factors of the JSORRAT-II, he was in the low risk range for reoffending while on probation. However, the minor did not accept any responsibility for the offense, which should be the primary focus for treatment. Taken together, Dr. Weber concluded “that the minor poses a low-moderate risk for reoffense.” While the minor did not have a mental disorder and was not a risk to children in general, Dr. Weber “would be very concerned if the minor lived in the same house with young children,” and would strongly advise against such placement.

The minor did not require hospital-based treatment, but six months of residential treatment was best suited for him. The recommendation for residential treatment was based on the minor’s denial of the offense, which meant “he had not considered the risk factors for reoffense, does not have a relapse prevention plan and does not have internal motivation for change.” The minor required the level of intervention associated with residential treatment “to help him break through his denial, understand his motivations and to develop a thorough relapse prevention program.”

According to the disposition report, the minor was born in February 1998 and lived with his mother, grandmother, and two siblings, one aged 21 months and one aged 15 years. He stopped attending school in 2016 and was unemployed.

The minor had been in juvenile hall for 119 days without incident at the time of the November 15, 2016 disposition report. He was classified as S-3, Low (suicidal ideations) and S-4, High (sexual abuse). The minor planned to obtain his GED after leaving juvenile hall. At the DJJ, the minor would be discharged two years from the date of his acceptance and jurisdiction would expire when he turned 21. The DJJ would place him in a unit with full-time academics. The minor would also attend sexual offender treatment, anger management, and alcohol/drug counseling.

The report recommended placement with the Division of Juvenile Facilities of the DJJ.

The contested disposition hearing was held on March 9, 2017. The minor filed the following items with the juvenile court: a letter from a high school teacher verifying his efforts to complete high school, a letter from a Northern California construction training program detailing the minor's participation in the program, a certificate of completion for the Burning Bush Moments program, a certificate indicating the minor was the Boys and Girls Club member of the month in October 2016, and a certificate indicating his participation in the Youth Employment Opportunity Program.

The trial court stated it had read and considered each of the documents. B.D.'s mother gave a victim impact statement. The minor, his mother, and grandmother all asked the court for the minor's immediate return to his family.

The juvenile court committed the minor to the DJJ, adopting the orders set forth in the disposition report.

## **DISCUSSION**

The minor contends it was an abuse of discretion to commit him to the DJJ. We disagree.

In making a sentencing decision under the juvenile court law, the court "shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor." (§ 202, subd. (d).)

"The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision. [Citations.] Nonetheless, there must be evidence in the record demonstrating both a probable benefit to the minor by a [DJJ] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. [Citations.] A [DJJ] commitment may be considered, however,

without previous resort to less restrictive placements.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) Indeed, the juvenile court may make such a commitment “in the first instance.” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) “Nor does the court necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried.” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) Under this standard, the juvenile court’s sentencing decision was well within its discretion.

The minor argues his offense, while severe, did not involve the excessive use of force or violence. He notes that he had no history of criminal activity or sexual misconduct, or any juvenile record. The minor also points out that the diagnosis of residential sex offender treatment was based primarily on his failure to admit culpability rather than his danger to public safety. From this, the minor concludes that the DJJ commitment was unnecessary for his rehabilitation or to protect society, and thus an abuse of discretion.

The minor was found to have committed a very serious offense, molesting a 10-year-old boy. The psychologist who examined the minor found anything less than residential sex offender treatment to be insufficient. Although the minor’s JSORRAT-II score showed a low risk of reoffending, the minor’s JSOAP-II score indicated a higher risk, and the psychologist concluded he posed a low to moderate risk of offending again. Further, placing the minor with young children would pose a great concern to the psychologist. The juvenile court could reasonably conclude from this record that the minor needed residential treatment, which was available through the DJJ.

We are unpersuaded by the minor’s claim that less restrictive alternatives were not considered. The psychologist’s report considered nonresidential treatment and found it wanting. The minor was a full-grown adult at the time of the disposition hearing; any placement with younger children was unacceptable given his offense and his unwillingness to take responsibility for it. Under these circumstances, finding less

restrictive residential treatment in the juvenile justice system posed considerable difficulties. The statement of minor's counsel at the disposition hearing that "I have to acknowledge Dr. Weber's report does recommend that at a minimum [the minor] participate in six months of residential treatment program, but the reality is, I don't have a certain living situation for him at this time," is telling. While we agree with the minor that he did not have the burden of finding less restrictive alternatives at the disposition hearing, the fact that minor's counsel could not identify any alternative to the DJJ commitment supports an inference that less restrictive acceptable alternatives did not exist.

Although the minor had no juvenile or criminal history before his current offense, and presented a low to moderate risk of reoffending, he needed residential treatment in a place where he could not pose a threat to younger children. That place was the DJJ and nothing in the record suggests a suitable but less restrictive alternative. It was not an abuse of discretion for the juvenile court to commit the minor to the DJJ.

### **DISPOSITION**

The findings and orders of the juvenile court are affirmed.

\_\_\_\_\_**BUTZ**\_\_\_\_\_, J.

We concur:

\_\_\_\_\_**BLEASE**\_\_\_\_\_, Acting P. J.

\_\_\_\_\_**DUARTE**\_\_\_\_\_, J.